

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

SOUTHERN OREGON UNDERGROUND, INC.

Employer

and

Case 36-RC-5983

TEAMSTERS LOCAL UNION NO. 962,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All truck drivers employed by the Employer at its Central Point, Oregon, facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The Employer is engaged in construction site development, transportation of rock materials, and bulk cement hauling, with a primary facility located in Central Point, Oregon. Petitioner seeks a unit of truck drivers. The Employer contends that the appropriate unit includes mechanics. There are approximately 19 truck drivers and four mechanics.

The Employer's business is divided into three divisions, which are each separate profit centers.¹ The construction division does site development for developers; that is, clears the land, puts in infrastructure utilities such as sewers and storm drains, spreads rock on the roads, has the roads paved, and otherwise prepares the property for construction of buildings. The employees in this division include heavy equipment operators who operate excavators, bulldozers, loaders, and backhoes, laborers who dig ditches and lay pipe; truck drivers who haul excess dirt away from the site; and mechanics who service the heavy equipment. Trucks assigned to this division include four 10-wheel dump trucks, two tractor-trailer lowboys used to haul equipment, and a service truck that fuels, lubes, and oils all equipment on a nightly basis. There are six truck drivers in the division, including one who drives the service truck and performs the servicing of the equipment. There are two mechanics in the division. They work on the heavy equipment, and one is a back-up driver for the service truck.² The parties stipulated that the heavy equipment operators and laborers should be excluded from the unit.

A second division is the construction materials delivery division, which buys, resells, and transports rock products, topsoil, road base, and riprap to homeowners, contractors, or construction jobs being performed by the Employer. About 35 percent of this division's sales are to the Employer's construction division. Other contractors sometimes rent the division's trucks with drivers on an hourly basis. The division has nine truck and trailer combinations with a box that can be dumped, three semi-belly dumps, and two water trucks. There are about 10 drivers in this division, and two mechanics in addition to the lead mechanic, John Mapes. The mechanics work on trucks for all three divisions. The parties stipulated that Mapes is a statutory supervisor.

The third division transports bulk cement from a rail siding in White City to Medford Ready Mix and LTM's concrete plants in Central Point and Ashland. The division has three tractor-trailer combinations with pneumatic tanks, and employs three drivers. The truck drivers in this division drive only in this division, while there is temporary interchange among the truck drivers in the other two divisions.

The Employer has a main facility consisting of 4.75 acres at 6450 Crater Lake Ave. in Central Point. There are two buildings on the site, along with a shed in which certain materials are stored. The heavy equipment mechanics work in one building. The other building includes the administrative offices, the "boys' room," and truck shop where the truck mechanics work. The boys' room has a refrigerator, restroom, storage boxes, and a desk with two trays on it, one tray for time cards and one for repair orders. Truck drivers turn in their time cards in the boys' room. All mechanics turn in their time cards in the administrative office.

The truck drivers call in every evening to get their assignments for the next morning. After completing the first job for the day, they contact the dispatcher for further instructions. The dispatcher is Joe Coffman. The parties stipulated that the dispatcher does not share a community of interest with the truck drivers and should be excluded from the unit. Truck drivers perform their work away from the Employer's facility. Throughout the day, they are in radio contact with the dispatcher and with each other.

The truck drivers' only work related contacts with mechanics are those made with respect to repairs needed to trucks. Drivers write an order for a repair and place it in the tray in the boys' room. A

¹ There is no evidence that the three divisions are separately supervised.

² There is insufficient evidence to support a finding that this mechanic is a dual function employee, and therefore I am not including him in the unit.

mechanic picks up the order, does the repair, and notes on the order that the work was done. Drivers also talk to mechanics by radio about mechanical problems they are having while off-site, but the record does not disclose how often such conversations occur. Drivers and mechanics also sometimes discuss such problems face-to-face, but, again, the record does not disclose how often this happens. Mechanics perform their work almost exclusively at the Employer's facility. A mechanic may be sent out off-site to perform a necessary repair, but there is no evidence as to how often this happens. Truck drivers perform routine maintenance on their own trucks, including checking and filling oil, adjusting brakes, checking water and other fluid levels and air pressure. Mechanics do not receive any training provided by the Employer.³ Truck drivers can learn on-the-job how to use different types of trucks and trailers. All truck drivers are required to have commercial driver's licenses (CDLs). Mechanics are not required to have CDLs, and the only mechanic who has one is the mechanic who is the back-up driver for the service truck. Mechanics occasionally test drive a truck by driving out one gate of the facility and back in the other gate, evidently a short distance.

All truck drivers are supervised by Doug Day, the operations manager, who reports to Michael Ussary, vice president and general manager of the Employer. The truck mechanics report to the lead mechanic, John Mapes. One heavy equipment mechanic, Evan Bowers,⁴ performs unspecified lead functions; both heavy equipment mechanics report to Ussary. Truck drivers and mechanics are paid hourly, and get time and a half for overtime over 40 hours per week. Truck drivers are paid \$10.75 to \$14.50 per hour. Mechanics are paid \$12.25 to \$14.00 per hour. Truck drivers and mechanics are all eligible for the same benefits. Truck drivers generally work more than 40 hours a week during the season of May through November, depending on the weather. Truck mechanics work 8:00 a.m. to 4:30 p.m., Tuesday through Friday, and 7:00 a.m. to 3:30 p.m. on Saturday. The record does not reveal the hours of the heavy equipment mechanics. There is testimony that mechanics could bid on truck driving jobs and vice versa, but there is no evidence that any interchange, either temporary or permanent, has occurred between truck drivers and mechanics.

Conclusion.

In *Novato Disposal Services*, 330 NLRB No. 97 (2000) and *Overnite Transportation*, 322 NLRB 347 (1996), the Board found that mechanics similar to those herein need not be included in units of truck drivers.

The truck drivers and the mechanics have separate supervision: truck drivers report to operations manager Doug Day, while truck mechanics report to lead mechanic John Mapes, and heavy equipment mechanics report to general manager Michael Ussary. Truck drivers perform their work away from the Employer's facility, while mechanics perform all or most of their work at the facility. Truck drivers are required to have CDLs, while mechanics are not so required. Truck drivers and mechanics perform different types of work, and do not interchange.

Although there is no specific evidence regarding the mechanics' training and skills, or the tools they use, it is self-evident that they have different skills and use different tools than do the truck drivers.⁵ Truck drivers do not perform mechanical work on their trucks alongside the mechanics. Mechanics are summoned to locations away from the Employer's facility to perform necessary repairs to trucks.

³ The record is silent with respect to the skills and experience of the mechanics.

⁴ No party contends that Bowers is a statutory supervisor.

⁵ *Novato Transportation*, supra; *Overnite Transportation*, supra.

Moreover, no labor organization is seeking to represent a unit of truck drivers and mechanics. “The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining.” *Overnite Transportation*, 322 NLRB 723 (1996).

I conclude, therefore, that the appropriate unit herein need not include mechanics, and I shall exclude them.

There are approximately 19 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL UNION NO. 962, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board’s Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the **new** Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before April 18, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 25, 2000.

DATED at Seattle, Washington, this 11th day of April, 2000.

/s/ CATHERINE M. ROTH

Catherine M. Roth, Acting Regional Director
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